UNCLAIMED PROPERTY LAWS – ARE YOU IN COMPLIANCE?

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Many companies have customer overpayments, un-cashed payroll checks and other property on their books that have remained "unclaimed" for some period of time. It's important for companies to know and comply with their obligations under state law in dealing with unclaimed property. Companies are prohibited from using or retaining the unclaimed property and, generally, must transfer the property to the unclaimed property division of the state corresponding to the last known address of the property owner. If no name or address is available, a company generally must submit unclaimed property to the state in which the Company is incorporated or organized.

Most states have adopted some form of the Uniform Unclaimed Property Act last revised in 1995 (the "Act"). The Act lists numerous categories of property, each of which has a corresponding dormancy period that establishes a presumption of abandonment. For example, in Tennessee, payroll checks that remain un-cashed for one year are presumed abandoned and a customer that is owed a refund or has a credit balance after five years is presumed abandoned. Consequently, un-cashed payroll checks older than 1 year and customer overpayments older than 5 years should be reported and the corresponding cash delivered to the state unclaimed property division. However, prior to submitting an unclaimed property report (the form of which varies state by state and is available from the unclaimed property division) and funds, a company must make one final attempt to contact the property owner in order to deliver the property. This does not mean that a company must conduct an exhaustive search for the property owner, but does obligate the company to send a letter to a last known address if available. The costs for this required diligence may NOT be off-set against the property itself unless such an arrangement was agreed upon previously and set forth in writing.

The amounts and penalties vary state by state, but there are generally interests and penalties assessed when a company fails to report its unclaimed property. Unclaimed property reports are due annually, and some states require "negative" unclaimed property reports meaning a company has no unclaimed property to report.

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